

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

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UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
CHARLES MICHAEL GOFF,  
  
Defendants.

Case No. 2:18-cr-00200-MMD-CWH

**REPORT AND RECOMMENDATION**

Presently before the court is defendant Michael Goff's motion to suppress (ECF No. 19), filed on September 4, 2018. The government filed a response (ECF No. 22) on September 18, 2018. Defendant filed a reply (ECF No. 25) on September 25, 2018. The court conducted an evidentiary hearing on October 1, 2018. At the conclusion of the hearing, Goff requested and obtained permission to obtain additional evidence. Goff subsequently moved to supplement the record (ECF No. 31) on October 16, 2018, the government responded (ECF No. 32) on October 29, 2018, and Goff replied (ECF No. 33) on November 2, 2018.

Goff is charged with a single count of being a Felon in Possession of a Firearm in violation of 18 U.S.C. § 922(g)(1) and 924(a)(2). On August 31, 2017, law enforcement officers stopped a car Goff was driving because its registration had expired. During the stop, one of the officers saw a gun in the car. Goff moves to suppress this gun because its seizure was the result of an unjustified extension of the traffic stop, and therefore violated Goff's Fourth Amendment rights.

**I. BACKGROUND**

Las Vegas Metropolitan Police Officer Arevalo testified that he and his partner Officer Behymer pulled over a red Mitsubishi Eclipse at about 5:55 a.m. on August 31, 2017 in Las Vegas, Nevada. Before the stop, the police had researched the plate number of the car in their

1 computer system and learned that it was expired. Wearing body cameras, both officers video  
2 recorded the stop and subsequent seizure of the firearm.<sup>1</sup> After stopping the car, Officer Arvelo  
3 approached the driver, Goff, and Officer Behymer approached the front seat passenger, Carmen  
4 Reyes, as they sat in the car. Goff provided Officer Arvelo a driver's license. Goff said his  
5 license may be expired, and that he may have traffic warrants. Behymer testified that Reyes said  
6 that she was the owner of the car, that there was an issue with the registration, and that she also  
7 believed she might have a warrant for a suspended driver's license. Reyes denied that there was  
8 anything illegal in the car the officer needed to know about, and Officer Behymer told her that his  
9 partner was checking their records and that they might be able to leave with just a warning.  
10 According to the video, two minutes and 30 seconds elapsed from the moment of the stop.

11 While Officer Behymer was talking with Reyes, Officer Arvelo had returned to his police  
12 car. He testified that he began checking records on his computer and confirmed that neither Goff  
13 nor Reyes had valid drivers' licenses, nor were there any outstanding arrest warrants. Goff's  
14 criminal history revealed a prior assault with a deadly weapon, multiple theft-related crimes  
15 including automobile theft, and an arrest for ex felon in possession of a firearm. Additionally, the  
16 criminal history required that Metro detectives be notified if officers had contact with Goff.<sup>2</sup>

17 Officer Arvelo testified that because of Goff's criminal record<sup>3</sup> and the need to conduct  
18 the traffic investigation in a safe manner, he decided to remove Goff and Reyes from the vehicle.  
19 Officer Behymer joined Officer Arvelo at the police car. At Officer Arevalo's request, both  
20 officers turned off their body cameras. Officer Arvelo testified that they turned off the body  
21 cameras because he wanted to discuss his strategy on how to safely remove Goff and Reyes from  
22 the vehicle, but he did not want to record that conversation because he felt his tactical discussions  
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25 <sup>1</sup> Government Exhibit 1.

26 <sup>2</sup> The requirement was called an "ROP," for Repeat Offender Program. Apparently, no such  
27 notification was made.

28 <sup>3</sup> Goff notes that his last gun conviction happened in 2010, and that his last assault conviction  
happened in 2000.

1 were not required to be recorded. The cameras remained off for about a one minute and 16  
2 seconds.<sup>4</sup>

3 With his body camera reactivated, Officer Arvelo removed Goff from the vehicle, and  
4 escorted him back to the front of the patrol car. Similarly, Officer Behymer removed Reyes.  
5 Officer Arvelo asked Goff whether he had any weapons on him, and Goff indicated that he had a  
6 pocket knife. Before searching for the knife, Officer Arevalo handcuffed Goff. He testified that,  
7 for officer safety, it is normal procedure to handcuff a suspect when seizing a weapon. According  
8 to his body camera, it took two minutes to remove Goff from the vehicle, handcuff him, and  
9 conduct a pat-down for weapons besides the knife which he found. A total of about six minutes  
10 had passed since the initial stop of the vehicle.

11 The video reveals that Officer Arevalo then entered his patrol car on the passenger side,  
12 and he testified that he began writing the traffic citation. He testified that the drafting of a citation  
13 includes collecting information from driver documents and computer information, recording an  
14 event number, identification number, name, location of event, whether the driver was impaired,  
15 vehicle identification, and a description of the event which lead to the traffic stop. The video  
16 shows that during this time, Officer Behymer spoke with Reyes and Goff as they stood at the  
17 front of the patrol vehicle. At one point, he also shined a flash light in their eyes, apparently to  
18 test sobriety. Officer Behymer also asked for consent to search the vehicle, and Reyes asked, “do  
19 you have to?” Officer Arvelo testified that he thought it was suspicious that Reyes would look at  
20 Goff when she answered Officer Behymer’s questions.<sup>5</sup>

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23 <sup>4</sup> Defense Exhibit D-1 indicates that Officer Arvelo’s body camera was activated from  
24 5:55:18 until 5:59:08. Defense Exhibit D-2 indicates that body camera was reactivated at  
25 6:00:24, so his body camera was off for one minute and 16 seconds, while he and Officer  
26 Behymer discussed strategy.

27 <sup>5</sup> While Officer Behymer was talking to Goff and Reyes, his recording stopped, and did  
28 not resume until approximately 23 minutes later. Office Behymer explained that the battery life  
of his body camera was about the same as the time length of his shift, and since he was at the end  
of the shift, the battery had drained. He explained that after leaving the camera off for a while, it  
came back to life for a longer period, as it sometimes does. The court finds his explanation  
credible – the recording contains a beeping sound which he explained was a warning that the

1           Officer Arvelo testified that as he sat in the patrol car preparing the traffic ticket, he  
 2           decided to return to Goff's vehicle to see if there was anything in plain view that was causing  
 3           Reyes to look suspicious. He testified that he based his decision on Goff's criminal history, that  
 4           Goff possessed a knife but said he did not know whether he possessed other weapons, and his  
 5           belief that Reyes was suspiciously looking at Goff when she answered Officer Behymer's  
 6           questions. The video reveals that, at the time Officer Arvelo returned to Goff's vehicle, he had  
 7           been in his patrol car for seven minutes and 30 seconds, apparently preparing the traffic citation.

8           The video shows that Officer Arvelo went to Goff's vehicle, looked into the passenger  
 9           side and front windshield, and then returned to the patrol car and handcuffed Reyes. He testified  
 10          that when he looked through the front windshield, he could see the handle of a firearm extending  
 11          out from underneath the passenger seat. About 30 seconds passed from the time that walked out  
 12          of his patrol car until he located the firearm. After he handcuffed Reyes and announced his  
 13          discovery, Office Arvelo then took photographs of the position of the firearm before moving it.  
 14          The photographs show the handle of the firearm beneath the passenger seat. It is this firearm  
 15          which is the focus of the motion to suppress. Approximately fourteen minutes had elapsed from  
 16          initial traffic stop to the discovery of the firearm.

## 17       **II. ANALYSIS**

### 18           **A. The initial traffic stop**

19          A traffic stop is a seizure within the meaning of the Fourth Amendment. *See Delaware v.*  
 20          *Prouse*, 440 U.S. 648, 653 (1979); *Whren v. United States*, 517 U.S. 806, 809-10 (1996). An  
 21          officer need only have reasonable suspicion to justify the seizure. *United States v. Lopez-Soto*,  
 22          205 F.3d 1101, 1104-05 (9th Cir. 2000). Goff makes no argument that the initial traffic stop was  
 23          unreasonable, and the court so finds.

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 28          battery was low. Goff makes no suggestion that anything relevant occurred during the time the  
 camera was off.

1           **B.       Removal of Goff and Reyes from the vehicle**

2           Goff told Officer Aravelo that he thought he had warrants and no driver's license, so a  
3 records check was appropriate even if it was not routine police procedure. When the stop  
4 occurred, Goff and Reyes, the owner of the vehicle, were asked to produce typical documents for  
5 a traffic stop: driver's license, registration, and insurance. With documents in hand, Officer  
6 Arevalo returned to his police car and accessed his computer to obtain their background  
7 information, discovered that both subjects had records of prior arrest and convictions, including  
8 vehicle theft and unlawful possession of a firearm, and decided to remove Goff and Reyes from  
9 the vehicle. The officers then turned off their video cameras to discuss a strategy to safely  
10 remove Goff and Reyes from the vehicle. Goff makes no suggestion that anything happened  
11 during the minute and 16 seconds that the camera was not activated, except that the officers  
12 discussed removing Goff from the vehicle, and so the court assigns no significance to the brief  
13 deactivation of the camera.

14           Even if Goff had no criminal history, the Officers did not need reasonable suspicion to  
15 remove the Goff and Reyes from the vehicle and could do so as a matter of course. *See*  
16 *Pennsylvania v. Mimms*, 434 U.S. 106, 111 n.6 (1977) (“[O]nce a motor vehicle has been lawfully  
17 detained for a traffic violation, the police officers may order the driver to get out of the vehicle  
18 without violating the Fourth Amendment’s proscription of unreasonable searches and seizures.”);  
19 *see also Ohio v. Robinette*, 519 U.S. 33, 41 (1996) (reasonable to order driver out of car during  
20 traffic stop for speeding). Thus, removing Goff from the vehicle was not inappropriate, and did  
21 not measurably extend this lawful traffic stop.

22           **C.       Handcuffing and seizure of Goff’s knife**

23           A patdown of a person for weapons requires reasonable suspicion that the person “is  
24 armed and presently dangerous to the officer or to others.” *Thomas v. Dillard*, 818 F.3d 864, 876  
25 (9th Cir. 2016) (*quoting Terry v. Ohio*, 392 U.S. 1, 24 (1968)). To establish reasonable suspicion  
26 that a person is presently armed and dangerous for the purpose of justifying a patdown, “the  
27 police officer must be able to point to specific and articulable facts which, taken together with  
28 rational inferences from those facts, reasonably warrant that intrusion.” *Id.* (*quoting Terry*, 392

1 U.S. at 21). Here, when Officer Arevalo lawfully removed Goff from the vehicle, he asked Goff  
2 whether he had any weapons on him, and Goff admitted that he did have a knife, and that he was  
3 not sure whether he had other weapons. The frisk for weapons was therefore reasonable because  
4 Goff admitted he possessed a knife. Officer Arevalo placed Goff in handcuffs for officer safety,  
5 which he testified is customary before obtaining a weapon from a suspect's person.

6 Goff does not contest the lawfulness of the seizure of the knife. He contests the propriety  
7 of his being handcuffed, indicating that it constituted an unjustified arrest. But it is well  
8 established that handcuffing a suspect does not transform a Terry stop into an arrest necessitating  
9 probable cause. *United States v. Booth*, 669 F.2d 1231, 1236 (9th Cir. 1981). Where a suspect  
10 threatens physical danger or flight, officers may use handcuffs in the course of a Terry stop. *See*  
11 *Washington v. Lambert*, 98 F.3d 1181, 1189 (9th Cir. 1996). Here, Goff admitted that he had a  
12 knife, and especially when combined with his criminal record, this constituted a physical danger  
13 to the officers to justify temporary handcuffing, and the court so finds.

14 The government argues that Goff's arrest was justified because he carried a concealed  
15 weapon in violation of Nevada Revised Statutes § 202.350. Other than asserting that the knife  
16 was a dangerous weapon, the government provided no description of the knife<sup>6</sup> or persuasive  
17 authority that having the knife in a pocket constitutes a violation of the statute. Accordingly, the  
18 court does not find that probable cause existed to justify Goff's arrest based upon a violation of  
19 NRS 202.350.

#### 20 **D. Writing the traffic citation**

21 Goff argues that the traffic stop was unnecessarily extended by the officers' actions, and  
22 therefore the seizure of the firearm was unlawful. Specifically, he argues that nothing about the  
23 initial encounter and records check gave the police reasonable suspicion to believe any other  
24 violations or crime may have been committed, so Officer Arevalo's extending the stop to look  
25 into the vehicle was improper.

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28 <sup>6</sup> The body camera video shows an object on the hood of the patrol car which Officer Arevalo  
identified as a knife, but the image is not clear.

1           Once lawfully stopped, an officer's mission includes "ordinary inquiries incident to [the  
2 traffic] stop." *Illinois v. Caballes*, 543 U.S. 405, 408 (2005). Typically, such inquiries involve  
3 checking the driver's license, determining whether there are outstanding warrants against the  
4 driver, and inspecting the automobile's registration and proof of insurance. *See Prouse*, 440 U.S.  
5 at 658-60. An officer may conduct certain unrelated checks during an otherwise lawful traffic  
6 stop, but he may not do so in a way that prolongs the stop, absent the reasonable suspicion  
7 ordinarily demanded to justify detaining an individual. *Rodriguez v. United States*, 135 S. Ct.  
8 1609, 1615 (2015).

9           To determine whether a detention is longer than justified under the circumstances, it is  
10 "appropriate to examine whether the police diligently pursued a means of investigation that was  
11 likely to confirm or dispel their suspicions quickly." *United States v. Sharpe*, 470 U.S. 675, 686  
12 (1985). "An officer's inquiries into matters unrelated to the justification for the traffic stop . . . do  
13 not convert the encounter into something other than a lawful seizure, so long as those inquiries do  
14 not measurably extend the duration of the stop." *Arizona v. Johnson*, 555 U.S. 323, 333 (2009).

15           During the course of an initial investigation, the police may develop a reasonable  
16 suspicion that there may be additional criminal activity afoot and continue to investigate that  
17 additional criminal activity as well. *See, e.g., United States v. Jones*, 234 F.3d 234, 241 (5th Cir.  
18 2000); *United States v. Jones*, 269 F.3d 919, 926-27 (8th Cir. 2001) (holding that if an officer  
19 develops reasonable suspicion regarding unrelated criminal conduct during the course of a lawful  
20 stop, "an officer may broaden his inquiry and satisfy those suspicions" without running afoul of  
21 the Fourth Amendment).

22           Here, the officers undisputedly had reasonable suspicion to stop Goff for the traffic  
23 citation. As discussed, they investigated Goff and Reyes in an appropriate manner by obtaining  
24 vehicle documents, removing them from the vehicle, and conducting a patdown search, all of  
25 which occurred in 6 minutes. Officer Arevalo then began drafting the traffic citation, which he  
26 testified normally takes from 8 to 10 minutes. Officer Behymer's interaction with Goff and  
27 Reyes at the same time that Officer Arevalo was writing the citation did not extend the duration  
28 of the stop. The only action taken which extended the traffic stop was when Officer Arevalo

1 interrupted his drafting of the citation for 30 seconds and walked to the vehicle and saw the  
2 firearm.

3       Officer Arevalo testified that he did not finish writing the traffic citation because he had  
4 discovered the firearm, and that such an unfinished citation would have been voided and made  
5 part of police records. After the hearing, Goff supplemented the record with an affidavit  
6 indicating that no record of a voided citation could be found by the police department.  
7 Accordingly, Goff argues that the absence of a voided ticket undermines Officer Arevalo's  
8 credibility, and that if there is no ticket, he was not diligently completing his investigation into the  
9 traffic stop. If he was not proceeding with diligence, then he improperly extended the traffic stop.  
10 The government responds that the absence of a record of a voided ticket does not mean that  
11 Officer Arevalo was not preparing a ticket, and the body camera video shows he was doing so.

12       Given the absence of a voided citation, the court has carefully reviewed Officer Arevalo's  
13 body camera video to determine whether he was writing a citation. Because of its angle, Officer  
14 Arevalo's body camera does not show his hands during the seven minutes and 30 seconds he is in  
15 his patrol vehicle. Rather, it shows that he remains in his seat, scrolls through records on his  
16 vehicle computer several times, looks at Goff's documents on the dash of his vehicle, and at one  
17 point, is holding a pen. Significantly, as he departs the vehicle to look at Goff's vehicle, he can  
18 be seen placing a clipboard on the dashboard in front of him. It appears that the clipboard is  
19 holding a form. Exhibit 1, at 11:15. In spite of the unexplained absence of a voided ticket, the  
20 court finds credible Officer Arevalo's testimony that he was preparing a traffic citation up until  
21 the time that he went to Goff's vehicle and found the weapon.

22       In summary, Officer Arevalo's body camera indicates that the total stop, which included  
23 two minutes 30 seconds to stop Goff's vehicle and obtain vehicle documents, one minute (off  
24 camera) to decide to remove Goff from the vehicle, two minutes to search Goff, seven minutes  
25 and 30 seconds apparently drafting a citation, and 30 seconds to find the gun, took a total of about  
26 14 minutes. Under these circumstances, the court finds that the officers were diligent in  
27 investigating the traffic citation, and Officer Arevalo's action of going and looking into Goff's  
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1 vehicle for 30 seconds did not measurably extend the duration of the stop such that the encounter  
2 was converted into an unlawful seizure.

3 Given that the officers were diligent in investigating the traffic offense and did not  
4 measurably extend it when they found the firearm, further reasonable suspicion beyond the traffic  
5 stop itself was unnecessary to justify the officers' actions. In other words, it does not matter that  
6 the stop was conducted in a high-crime area, in relative darkness, that Reyes and Goff looked  
7 suspicious or nervous, that Goff has an extensive criminal history, or that Reyes refused to  
8 consent to the search of the vehicle.<sup>7</sup> Because the firearm was discovered in the course of the  
9 traffic stop which was not measurably extended by the officers' other concerns or actions, the  
10 temporary seizure of Goff was not converted to a seizure requiring probable cause.

11 **E. The discovery of the firearm**

12 Goff argues that the firearm was not in plain view, but rather was the result of a search.  
13 The government responds that the firearm was seen by Officer Arevalo by looking through the  
14 front window. Incriminating evidence in plain view can be seized if the officer does not violate  
15 the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed.  
16 *Horton v. California*, 496 U.S. 128, 136 (1990). *See also, U.S. v. Stafford*, 416 F.3d 1068, 1076  
17 (9th Cir. 2005) ("To fall within the plain view exception, two requirements must be met: the  
18 officers must be lawfully searching the area where the evidence is found and the incriminatory  
19 nature of the evidence must be immediately apparent."). Here, Goff's record indicated that he  
20 was a felon. Officer Arevalo's testimony of how he saw a firearm in plain view, supported by his  
21 body camera video, and how he subsequently photographed it, is uncontested. The court finds  
22 that the incriminatory firearm was in plain view, and therefore its seizure did not violate the  
23 Fourth Amendment.

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26 <sup>7</sup> No evidence was provided to support the officers' assertion that the stop occurred in a  
27 high-crime area. Daylight was sufficient for the body camera to record the stop. Review of the  
28 body camera videos does not show any obviously suspicious or nervous behavior by Reyes or  
Goff. Neither Goff's criminal history in itself, nor Reyes' refusal to consent to a search, provide  
reasonable suspicion for a search of the vehicle.

1 **III. CONCLUSION**

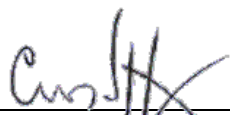
2 IT IS THEREFORE RECOMMENDED that defendant Michael Goff's motion to  
3 suppress (ECF No. 19) be DENIED.

4 IT IS ORDERED that defendant Michael Goff's motion to supplement the record (ECF  
5 No. 31) is GRANTED.

6 **IV. NOTICE**

7 This report and recommendation is submitted to the United States district judge assigned  
8 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation  
9 may file a written objection supported by points and authorities within fourteen days of being  
10 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely  
11 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d  
12 1153, 1157 (9th Cir. 1991).

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14 DATED: November 6, 2018

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18 C.W. HOFFMAN, JR.  
19 UNITED STATES MAGISTRATE JUDGE  
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